FILED
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HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 178

JACK C. VAUGHAN,
Petitioner,

versus

CITY BANK & TRUST COMPANY, NATCHEZ, MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

JACK C. VAUGHAN,
Petitioner, *In Propria Persona,*
MAILING ADDRESS:
Post Office Box 1005,
Gardena, California.

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I.

OPINIONS OF THE COURTS BELOW.

A. No opinion was rendered by the United States District Court for the Southern District of Mississippi, the court of first instance. Its ORDER of dismissal of May 17, 1954[1] is not officially reported.

B. The Opinion rendered January 28, 1955, by the United States Court of Appeals for the Fifth Circuit, sustaining the Order of dismissal of the District Court, is officially reported at *218 F. 2nd 802*.

II.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

A. The Judgment of the Court of Appeals was entered on January 28, 1955[2] (Tr. 80). Petitioner seeks review of the Judgment and the Order of the Court of

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1 "The Court having been advised by plaintiff's document filed May 12th, 1954 that he desires to dismiss this cause,

It is therefore ordered by the Court that said cause be and the same hereby is, dismissed.

ORDERED, this the 17th day of May, 1954.

(S.) S. C. MIZE,
(S. C. Mize),
Judge, United States District Court."

2 "This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

"On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

"It is further ordered and adjudged that the appellant, Jack C. Vaughan, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court."

On April 26, 1955, Mr. Justice HUGO L. BLACK of the Supreme Court extended the time for applying for a writ of certiorari for a period not exceeding ~~sixty~~ sixty days, or until June 25, 1955.

Appeals denying petition for rehearing, which Order was entered on March 17, 1955 (R. 87).[3]

B. The Statutory provisions believed to confer on the Court jurisdiction to review the judgments in question by writ of certiorari are *Title 28, USCA, Section 1254(1)*[4] and *Title 28, USCA, Section 2101(c)*.[5]

C. Petitioner believes that jurisdiction of this Court should be invoked to secure uniformity of decision between Courts of Appeals and to decide Federal Questions of importance which it is in the public interest to have decided by this Court of last resort.

1. Petitioner believes that the United States Court of Appeals for the Fifth Circuit should have decided a federal question in accordance with the applicable decisions of this Court, and other Courts of Appeals.

2. Petitioner believes that the United States Court of Appeals for the Fifth Circuit has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by the District Court as to be a major concern to the integrity of the federal judicial process, and demands the exercise of this Court's powers of supervision.

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[3] "It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied."

[4] Pertinent portions: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil . . case, before or after rendition of judgment or decree."

[5] Pertinent portions: ". . (c) . . any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

III.

THE QUESTIONS PRESENTED FOR REVIEW.

A. As the time for serving Answer under *Rule 12(a) of the Federal Rules of Civil Procedure, 28 USCA,* had expired; and no motion for enlargement of time was made by defendant wherein failure to act was shown to be the result of excusable neglect; on motion to strike by plaintiff, should not a late purported Answer of defendant be stricken for failure of defendant to comply with *Rule 6(b) of the same Federal Rules of Civil Procedure?* If so, then where the defendant is in default, and plaintiff applies to the District Court for judgment by default under *Rule 55(b) of the Federal Rules of Civil Procedure* and defendant's representative is served with written notice of the application for judgment, and does not oppose it; may the District Court deny plaintiff a hearing and completely ignore plaintiff's application?

B. Plaintiff's motion for summary judgment on the complaint and affidavits being *unopposed* by the defendant; should not the motion have been granted? If not, then was not the District Court *required,* under *Rule 56 of the Federal Rules of Civil Procedure,* to make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy? If so, then where, from the pleadings, depositions and affidavits on file, the District Court, under *Rule 56,* would have been forced to specify that *all the facts alleged by the plaintiff were without controversy;* if the complaint

states a claim upon which relief can be granted, is not the plaintiff entitled to summary judgment for the relief prayed as a matter of law?

C. Where plaintiff's complaint and motion for summary judgment allege that plaintiff's lands and chattels were wrongfully seized *year prior* to agreed dates, and *years prior* to time that any payments were due; and defendant asserts no paramount title or right to the property; does not deny the breach of agreements; and does not oppose the plaintiff's motion for summary judgment; is not the unlawful and wrongful seizure, occupation, use and enjoyment of plaintiff's lands and chattels and the fruits thereof by the defendant the taking of plaintiff's property without due process of law, and in rank violation of plaintiff's rights under the Fifth Amendment to the Constitution?

IV.

THE CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES.

A. *Rule 1, F.R.C.P., 28 USCA: "SCOPE OF RULES."*

> "These rules govern the procedure in the United States District courts in all suits of a civil nature whether cognizable at law or in equity. . . They shall be construed to secure the just, speedy, and inexpensive determination of every action".
> *Title 28, U.S.C.A., "Rules 1 to 16", p. 167.*

B. *Rule 5, F.R.C.P., 28 USCA: "SERVICE AND FILING OF PLEADINGS, ETC."*

"(a) *Service, When Required:* . . . every pleading subsequent to the original complaint . . . shall be served upon each of the parties affected thereby. . ."

"(b) *Same: How Made:* Whenever under these rules service is required. . .service shall be made . . .upon a party. . .by delivering a copy to him or by mailing it to his last known address . . .Service by mail is complete upon mailing."

"(d) *Filing:* All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter."

Title 28, U.S.C.A., "Rules 1 to 16", pp. 228-229.

C. *Rule 6, F.R.C.P., 28 USCA: "TIME".*

"(b) *Enlargement:* "When by these Rules. . .an act is required. . . to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. . .".

Title 28, U.S.C.A., "Rules 1 to 16", p. 232.

D. *Rule 12, F.R.C.P., 28 USCA: "DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—. . ."*

"(a) *When Presented:* A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him. . . The service of any motion provided for in this rule alters (this) period of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion. . .the responsive pleading shall be served within 10 days after notice of the court's action. . .".

"(b) *How Presented:* Every defense, in law or fact, to a claim for relief. . .shall be asserted in the responsive pleading thereto. . ., except that the following defenses may at the option of the (defendant) be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indepensable party."

Title 28, U.S.C.A., "Rules 1 to 16", p. 334.

E. *Rule 54, F.R.C.P., 28 USCA: "JUDGMENTS; COSTS."*

"(c) *Demand For Judgment:* A judgment by default shall not be different in kind from. . . that prayed for in the demand for judgment . . .".

Title 28, U.S.C.A., "Rules 52 To End", p. 116.

F. *Rule 55, F.R.C.P., 28 USCA: "DEFAULT".*

"(a) *Entry:* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear. . ., the clerk shall enter his default."

"(b) *Judgment:* . . .the party entitled to a judgment by default shall apply to the court therefor. . . If the party against whom judgment by default is sought has appeared, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment. . .".

"(d) . . .In all cases a judgment by default is subject to the limitations of Rule 54(c)."

Title 28 U.S.C.A., "Rules 52 to End", pp. 146-147.

G. *Rule 56, F.R.C.P., 28 USCA: "SUMMARY JUDGMENT".*

"(a) *For Claimant:* A party seeking to recover upon a claim. . .may, at any time after the expiration of 20 days from the commencement of the action. . .move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof."

"(c) *Motion And Proceedings Thereon.* The motion shall be served at least 10 days before the time fixed for the hearing. . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . .".

"(d) *Case Not Fully Adjudicated On Motion.* If on motion under this rule judgment is not rendered. . .the court. . .shall. . .ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy. . .the facts so specified shall be deemed established. . .".

Title 28, U.S.C.A., "Rules 52 to End", pp. 153-154.

H. *Amendment V.—Constitution:*

"No person shall. . .be deprived of . . .property, without due process of law. . .".

U.S.C.A., "Constitution—Amendments 1 to 13", p. 102.

V.

STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED.

A. *Basis For Federal Jurisdiction In The Court Of First Instance:* Petitioner, Jack C. Vaughan, plaintiff in the District Court, and appellant in the Court of Appeals, filed this suit in the United States District Court for the Southern District of Mississippi, on *March 20th, 1953*

(R. 1). The complaint alleged the plaintiff to be a citizen of Louisiana and the defendant a citizen of Mississippi (R. 1). The matter in controversy was alleged to exceed $3,000.00, exclusive of interest and costs (R. 1). Personal service of the summons and complaint was obtained by the United States Marshal's Deputy upon an officer of the defendant corporation, the City Bank & Trust Company, Natchez, Mississippi, on March 20th, 1953 (R. 25).

B. *Statement Of The Facts:* This is a suit to recover from the defendant the plaintiff's lands and chattels, together with $10,416.95 which plaintiff paid defendant, and $250,000.00 as damages for false and malicious publication of notice of trustee's sale of property on which plaintiff had given deeds in trust; and to cancel and set aside such deeds of trust given by plaintiff on the lands and chattels (R. 4-5).

On April 8th, 1953, defendant bank served and filed a motion to dismiss [6] on grounds of failure of the complaint to state a claim and lack of jurisdiction on alleged grounds that the plaintiff was a Mississippi, instead of a Louisiana, citizen.

On April 17th, plaintiff filed motion for summary judgment [7] (R. 29-37) supported by affidavits and depositions (R. 36-37) (R. 43).

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[6] "The Defendant, City Bank & Trust Company, moves the Court as follows: (1) To dismiss the action because the complaint fails to state a claim upon which relief can be granted. (2) To dismiss the action because the Plaintiff, Jack C. Vaughan, is actually a citizen of the State of Mississippi, and there is, therefore, no ground upon which the jurisdiction of this Court can be invoked".

[7] Pertinent portions of this motion for summary judgment: "Deponent (plaintiff) refers to the Complaint and Exhibits herein for a more particular statement of the cause of action.

Plaintiff's motion for summary judgment on the complaint, affidavits and depositions was unopposed. The

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"3. Deponent verily believes that there is no genuine issue as to any material fact (in regard to the suit for recovery of the $10,416.95 paid defendant, and cancellation of the agreements of December 29, 1949 and deeds of trust of January 23, 1950); and that plaintiff is entitled to judgment on those portions of his complaint as a matter of law.

"4. Deponent shows: *a.* On January 23, 1950, plaintiff executed a certain deed of trust and agreed to pay defendant on or before the due dates recited therein the total sum of $15,000.00 with interest at the rate of 5% per annum. Payments of principal were scheduled as follows: $2,000.00 per year due January 23, 1951 through January 23, 1957; and $1,000.00 due January 23, 1958. *b.* Under agreement with the United States of America and the plaintiff, dated December 29, 1949. the defendant agreed that until the 30 day of November, 1956, no steps would be taken by the defendant to enforce the payment or collection of any claim against the plaintiff's stock and farming implements, nor cause said property to be attached or sold, nor attempt to take possession thereof. *c.* That on October 13, 1950, plaintiff became heavily involved in litigation in the Arkansas Courts relating to the ownership of some 3,720 acres of lands in Chicot County, Arkansas . . *d.* (That) In order to weather the impeding legal struggle . . plaintiff sought to make secure from foreclosure, as long as possible, his best lands, in addition to his stock and implements which he considered secured under the above agreements of December 29, 1949. Accordingly, ten days after the institution of the Arkansas litigation by certain of his adversaries, plaintiff on October 23, 1950, long before any payments were due on the above deed of trust (4-a, *supra*), paid to the defendant the sum of $10,416.95. . *e.* This payment of $10,416.95 was made with the verbal understanding that all principal and interest was paid until January 23, 1955. *f.* On March 14th, 1953, long before any payments were due, and despite the solemn agreements entered into, there was published, according to the advertisement itself, at the instance of the defendant, a notice of trustee's sale of the lands of the plaintiff, set forth and described in the aforesaid deed of trust. Said notice stated in part: 'Whereas default has been made in the payment of the indebtedness secured by said Deed of Trust. .' the said lands would be sold at public outcry. . *g.* On March 20, 1953, plaintiff filed this styled and numbered action in this Court. *h.* At various times during the week of March 30 and April 6, 1953, plaintiff is informed and verily believes defendant seized plaintiff's farming implements in flagrant violation of the Non-Disturbance Agreement of December 29, 1949 . . As to the exact times and places, persons present, and the names of the agents of defendant who actually seized the said implements, plaintiff does not at this time know. But plaintiff verily believes these facts to be within the knowledge of the defendant. *i.* On April 9, 1953, plaintiff received through the mails a purported copy of the defendant's Motion To Dismiss. Now, by way of reply thereto, plaintiff shows: *a.* The verified complaint and this Affidavit of Plaintiff and Motion For Summary Judgment, states a claim upon which some relief can be granted. *b.* That the plaintiff is no longer a citizen of the State of Mississippi (supporting depositions of the Clerks of the County of Adams, Mississippi, and the Parish of Orleans, Louisiana, under seal, showed plain-

defendant bank did not take issue with any of the facts stated, or attempt to offer any evidence in contradiction of those stated facts.

On September 17, 1953, the District Judge served the following notice on the parties: (R. 49.)

> "I do not see that I have ruled on the motions in the above case but have now considered same and am of the opinion that the motion to dismiss the case because the plaintiff is a citizen of the State of Miss. as well as for the other reasons assigned should be overruled. The question of jurisdiction is always present and of course if at the trial it develops that

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tiff had moved to Louisiana on August 27, 1952 with the intention of making Orleans Parish, Louisiana, his residence and domicile, and on January 9, 1953, had publicly renounced his previous Mississippi citizenship). .". Plaintiff thereupon prayed the District Court to strike the motion to dismiss of the defendant, and: "2. That judgment in favor of the plaintiff for the sum of . . ($10,416.95) be granted, with interest from the 23rd day of October, 1950, with the costs of the action and of this motion. 3. That defendant be ordered to forthwith return all stock and equipment of plaintiff seized by defendant or its agents since the commencement of this action, and in good state of repair for farming operations. That plaintiff's lands seized since the institution of this action be returned to the plaintiff by the defendant. 4. That all deeds of trust and chattel mortgages executed by plaintiff under and by virtue of the said Non-Disturbance Agreement (Exhibit "D" of the complaint) be hereby cancelled, set aside and declared to be henceforth null and void. 5. That that portion of plaintiff's complaint, for the recovery of damages in the sum of $250,000.00 by reason of the alleged malicious and libelous publications, be forthwith ordered to trial upon the merits. 6. . . for such other relief as by this Court deemed necessary."

Motion For Hearing was filed by the plaintiff on June 25th, 1953, as follows: "Comes now the plaintiff, Jack C. Vaughan, and respectfully moves the Court that he be granted hearing on his Motion for Summary Judgment filed heretofore in this cause on April 17, 1953; and that the Court set a date convenient for it for such a hearing; such date, if practicable, to be not later than July 10th, 1953; the hour and place for such hearing to be held at any place within the Southern District convenient to the Court. In support of this Motion for Hearing, plaintiff shows that he is being wrongfully denied possession of his lands and farming equipment by defendant, and for each day of such denial the defendant profits by his alleged wrong in that he has converted both the lands and the equipment to his personal use and gain (R. 44).

plaintiff was a citizen of Miss. when the suit was filed, it would then be dismissed for lack of jurisdiction. The defendant may have till Oct. 5th to answer the complaint.

"The motion of plaintiff for a summary judgment will be overruled. I think the case is one for trial. An order may be drawn by Mr. Forman on both these matters and mailed to me at Gulfport in accord herewith copies to be sent to plaintiff. I will be in Vicksburg Oct. 5th and hear any preliminary matters that may arise.

Sincerely yours,
(S.) S. C. MIZE."

On September 25, plaintiff, urging the District Court to reconsider and grant him summary judgment, filed an "Affidavit And Election Of Plaintiff To Stand Upon The Complaint And Pleadings Heretofore Filed" (R. 45-47) [8]

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[8] Pertinent portions: "*(4)* . . on or about 9th April, 1953, affiant (plaintiff) received through the United States Mail from one purportedly R. Brent Forman, attorney for the defendant, a Motion To Dismiss, which denied only one allegation of the Complaint—the allegation that the Plaintiff was a citizen of Louisiana. *(5)* That on April 17, 1953, in response to Defendant's aforesaid denial; plaintiff filed his affidavit and motion for summary judgment, together with supporting certificates of public officers showing that he had moved into the Parish of Orleans and State of Louisiana in August, 1952, with the intention of making that Parish and State his residence and domicile; that he had abandoned his voting rights in Mississippi; that he had publicly renounced his Mississippi citizenship by filing a Declaration of Domicile in the Office of the Recorder. *(6)* Affiant has had no notice whatever of any affidavits in denial, or denial by Defendant, of Plaintiff's exhibits to the latter's Motion for Summary Judgment. *(7)* On June 25, 1953, Plaintiff filed a Motion for hearing on his Motion for Summary Judgment. The Motion for hearing was ignored. *(8)* On September 21, 1953, affiant received through the United States Mails from one purportedly S. C. Mize, Judge of the District Court of the United States, a letter . . overruling plaintiff's motion for summary judgment—and also overruling defendant's motion to dismiss. *(9)* Affiant verily and truly believes that His Honor cannot overrule Defendant without a simultaneous finding that the Plaintiff is not a citizen of Mississippi. Nor can his Honor hold that Plaintiff is not a citizen of Mississippi without granting him summary judgment for the relief prayed. WHEREFORE, steadfastly praying the Court to reconsider, and grant him summary judgment for the relief sought—Plaintiff . . hereby elects to stand upon the Complaint and pleadings heretofore filed herein, and suffer judgment; reserving only his rights of appeal".

and suffer final judgment, reserving only his rights of appeal (R. 47).

On October 5th, the defendant bank defaulted in serving its Answer to the complaint (R. 53, 56).

Without moving for permission to serve answer after October 5th, and without accounting for its failure to serve its answer within the time designated by the Court by a showing of excusable neglect, or otherwise; after business hours on October 6, 1953, the defendant mailed its "Answer Of Defendant" to plaintiff (R. 56). No certificate of service was appended to the pleading (R. 53).

On October 13, 1953, plaintiff moved for default judgment.[9] Service of the application for default judgment was made on defendant's counsel on October 13, 1943 (R. 60-62).

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[9] Pertinent portions: "2. Plaintiff respectfully shows that the pleading of the Defendant entitled 'Answer Of Defendant' is invalid as the time for filing answer had at that time expired; and its filing was in flagrant violation of Rule 6(b) . . of the Federal Rules of Civil Procedure, and extremely prejudicial to the substantial rights of the Plaintiff. 3. Plaintiff verily believes that the right of the Plaintiff to a just, speedy and inexpensive determination of this action, to which he is entitled under Rule 1 of the Federal Rules of Civil Procedure, has been denied him to the prejudice of, and irreparable harm to, his substantial right. In support of his belief, Plaintiff respectfully shows that this Honorable Court has enabled the Defendant, for the entire crop year of 1953, to wrongfully seize, occupy, use and misuse, and enjoy Plaintiff's lands, cattle, farming implements, and the fruits thereof, without due process, and in rank violation of Plaintiff's rights under Federal Law; and despite the pleas of the Plaintiff for a hearing, filed herein on June 25, 1953. 4. . . . The Defendant has been permitted to completely ignore the provisions of Rule 12(a) of the Federal Rules of Civil Procedure. Plaintiff respectfully protests against this sort of charitable indulgence of Defendant's counsel wandering among the Rules that are Federal Law. At great cost and harm to Plaintiff; such indulgences have permitted the Defendant to enjoy the fruits of his wrongful seizures of Plaintiff's lands and chattels. 5. Plaintiff respectfully submits that he is appearing here in his own behalf, by leave of this honorable Court, through necessity; not choice. Plaintiff is not a lawyer; never has been a lawyer; and never expects to be a lawyer. However, Plaintiff has had some legal

On October 19, 1953, the two orders which defendant's counsel had been requested by the court to prepare on September 17, (an "Order Overruling The Motion Of Defendant To Dismiss",[10] and "Order Overruling Motion Of Plaintiff For Summary Judgment") [11] were filed. (R.

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education, and it goes without saying that he is presumed, by the Courts, to know the law whether he knows the law or not. If the Plaintiff must abide by the Federal Law as laid down in the Federal Rules of Civil Procedure; so, too, should the Defendant, who is most capably represented by one of the largest law firms in Mississippi. To the Plaintiff's prejudice, on September 17th, 1953, this Honorable Court gave the Defendant until October 5th, 1953, to answer the Complaint. Even this was not done. (Par. 6, post.) *6.* On October 9, 1953, the Plaintiff received through the United States Mails, Post Office Box 434, Main Post Office, St. Louis, Missouri, in an envelope addressed to him, and bearing Post Office Mailing Mark ('Natchez, Miss. Octo. 6, 7:30 PM 1953') and bearing the return address: 'Laub, Adams, Forman & Truly, Attorneys at Law, P. O. Box 599, Natchez, Mississippi' a purported pleading of the Defendant entitled: ANSWER OF DEFENDANT. . . WHEREFORE the Plaintiff, Jack C. Vaughan, still steadfastly praying for relief from the wrongs of the Defendant; prays the Court to disregard the pleading of the Defendant entitled *'Answer Of Defendant'*, as the time for serving answer as prescribed by Rule 12(a) of the Federal Rules of Civil Procedure and the Order of the Court had expired; that the said *'Answer Of Defendant'* be held to be fatally defective in that there was a failure to answer within the time prescribed after this Court's overruling of a precedent motion; and that under the provisions of Rule 55(b) of the Federal Rules of Civil Procedure this Court grant the Plaintiff judgment by default against the Defendant in the amount of . . ($260,416.95), together with his costs; and further, that this Court order that the Agreements of December 29, 1949, and the Deeds of Trust of January 23, 1950, be hereby cancelled, set aside, and henceforth held for naught. In the alternative, the Plaintiff will continue in his election to stand upon the Complaint and the pleadings filed prior to September 25, 1953, and still steadfastly pray the Court to reconsider, and grant plaintiff summary judgment for the relief prayed last April 17th, 1953".

[10] "This cause coming on for hearing on the Motion of Defendant to dismiss the case, the Court having considered same and being of the opinion that same should be overruled.

"NOW THEREFORE, it is hereby ordered and adjudged that the Motion of the defendant to dismiss the case be, and the same is hereby overruled.

"ORDERED AND ADJUDGED this 10th day of October, 1953."

[11] "This cause coming on for hearing on the Motion of the plaintiff herein for a summary judgment, and the Court having considered the same and being of the opinion that same should be overruled.

"NOW, THEREFORE, it is hereby ordered, and adjudged that the Motion of the plaintiff for summary judgment be, and same is hereby overruled.

"ORDERED, ADJUDGED AND DECREED this the 10th day of October, 1953".

62-63). And on November 20, the plaintiff's application for default judgment was ignored [12] without plaintiff being granted a hearing, and without any opposition to the motion for default judgment having been offered by the defendant. The plaintiff's motion to strike the answer of defendant was overruled, his plea for reconsideration of his Motion for Summary Judgment Denied, and the cause adjudicated to be at issue on the complaint and answer. The case was continued until the third Monday of May, 1954 (R. 63, 64). See Note (12).

On May 12th, 1954, plaintiff filed the following Notice To The Court:

> "This Honorable Court is again respectfully advised that the plaintiff, Jack C. Vaughan, does not intend to take any further steps in the above cause in this Court in the prosecution of his claim against the defendant, the City Bank & Trust Company, of Natchez, Mississippi, and asks that the cause be dismissed.
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> "This intention, plaintiff believes, was made clear to this Honorable Court and to the defendant by pleadings and affidavits filed by plaintiff in this cause on September 25, 1953 and October 13, 1953.

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12 "The Court having examined the file in this matter and considered the motions therein pending, it is now ordered by the Court that the motion of the Plaintiff filed October 13, 1953 to strike the answer of the Defendant be and it is hereby overruled.

"It is further ordered by the Court that the prayer of the Plaintiff filed September 25, 1953 for reconsideration of his motion for a summary judgment be and the same is hereby overruled.

"It is further ordered that any other motion that may be in the file with reference to a reconsideration of the motion for a summary judgment be and the same is hereby overruled.

"The Court now adjudicates that the cause of action is at issue upon the complaint and answer and that said cause be continued until the third Monday of May, 1954.

"ORDERED, this the 20th day of November, 1953."

"Plaintiff is advised by the Clerk that all costs to date have been paid by plaintiff.

Respectfully submitted,

(S.) JACK C. VAUGHAN . ." (R. 64-65).

On May 17th, 1954, an Order of dismissal was entered, and on June 11, plaintiff filed Notice of Appeal (R. 66), basing his appeal upon the following specifications of error:

I.

"As the time for serving answer had expired, and no motion for enlargement of time was made by defendant wherein failure to act was shown to be the result of excusable neglect; as a matter of law the 'Answer of Defendant' should have been stricken for failure of defendant to comply with Rule 6(b) of the Federal Rules of Civil Procedure. (R. 67.)

II.

"The plaintiff, as a matter of law, was entitled to default judgment against the defendant under the provisions of Rule 55(b) of the Federal Rules of Civil Procedure. (R. 68.)

III.

"The District Court denied plaintiff a just, speedy and inexpensive determination of this action to the prejudice of, and irreparable harm to, plaintiff's substantial rights. (R. 68.)

IV.

> "The District Court enabled defendant to wrongfully seize, occupy, use and misuse and enjoy plaintiff's lands and chattels and the fruits thereof; without due process, without a hearing, in rank violation of plaintiff's rights under the Fifth Amendment to the Constitution and federal law—and despite the pleas of plaintiff for a hearing". (R. 68.)

Upon the docketing of the appeal in the Court of Appeals, the appellee bank filed motion to dismiss the appeal (R. 70) on grounds that the Order of May 17, 1954 was not an appealable order. Appellant filed motion to strike (R. 72-74).

On January 28, 1955, the Court of Appeals in its "Opinion" overruled appellee in the following language:

> "As to the dismissal order of May 17, 1954, . . we are of the clear opinion that it was entered properly and advisedly and no error requiring its reversal has been made to appear, (and) we are also of the opinion that the order was final and appealable . . and the motion to dismiss the appeal . . must be and it is denied". *218 F. 2d 803.*

But the Court of Appeals did not mention, much less pass on, a single one of the four Specifications of Error *(supra)* upon which the appellant based his appeal. (Ibid.) It simply said:

> "The judgment was right. It is AFFIRMED". (Ibid.)

On February 14th, 1955, the appellant filed Petition for Rehearing.[13]

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[13] The Petition for Rehearing in full: "Comes now the appellant, Jack C. Vaughan, and presents this, his petition for rehearing of the above entitled cause; and respectfully calls the attention of the Court to the following material matters of law and fact believed inadvertently overlooked by the Court as shown by its Opinion of January 28, 1955.

"In the Opinion of this Court of January 28, 1955, no mention is made of the following facts as shown by the Record in the case:

"a. On April 8, 1953, defendant bank served a motion to dismiss upon grounds that the District Court lacked jurisdiction, and further alleged that the complaint failed to state a claim upon which relief could be granted (R. 27).

"b. On September 17, 1953, the district judge served notice on the parties that the defendant bank's motion to dismiss was overruled (R. 49-50), and the defendant was given *'until October 5th to answer the Complaint'* (Emphasis added) (R. 49).

"c. On October 5th, the defendant bank *defaulted in serving his Answer* to the complaint (R. 53, 56). Without moving for permission to serve answer after October 5th, and without accounting for his failure to serve his Answer within the time designated by the Court by a showing of excusable neglect, or otherwise; after business hours on October 6, 1953, defendant mailed his 'Answer of Defendant' to plaintiff (R. 56). No certificate of service was appended to the pleading.

"d. On October 13, 1953, plaintiff moved for default judgment, praying the Court that the said 'Answer of Defendant' be held to be fatally defective in that there was a failure to answer within the prescribed time and that 'under the provisions of Rule 55(b) of the Federal Rules of Civil Procedure this Court grant the plaintiff judgment by default against the defendant in the amount of Two Hundred and Sixty Thousand, Four Hundred and Sixteen and 95/100 Dollars ($260,416.95), together with his costs; and further, that this Court order that the Agreements of December 29, 1949, and the Deeds of Trust of January 23, 1950, be hereby canceled, set aside, and henceforth held for naught' (R. 61). Service of the foregoing was made upon the defendant's counsel on October 12, 1953 (R. 60-62). No opposition to the above prayer for default judgment was made by the defendant.

"e. On November 20, 1953, without granting plaintiff a hearing, the District Court ignored the application for default judgment (R. 63-64) and adjudicated the cause to be upon the complaint and answer (R. 64).

THEREFORE: As the time for serving answer had expired, and no motion for enlargement of time was made by defendant wherein failure to act was shown to be the result of excusable neglect; *as a matter of Federal Law*, the 'Answer of Defendant' should have been stricken for failure of defendant bank to comply with Rule 6(b) of the *Federal Rules of Civil Procedure*, 28 USCA, and, therefore the plaintiff, *as a matter of Federal Law*, was entitled to default judgment against the defendant under the provisions of Rule 55(b) of the *Federal Rules of Civil Procedure*, 28 USCA.

On March 17, 1955, appellant's Petition For Rehearing was denied (R. 87).

Petitioner is here with three questions (III., *supra*).

"II. The plaintiff alleged in his complaint (R. 3, 4) and his motion for summary judgment (R. 32, 33) that his lands and chattels, which were a main subject of this suit, were being wrongfully seized by the defendant bank *years prior* to agreed dates, and *years prior* to the time that any payments were due.

"If the defendant bank had a paramount title or right to the property, that right or title should have been asserted in response to plaintiff's motion for summary judgment; for it was the duty of the defendant bank to fully disclose what the evidence would have been on this issue raised by the motion. And the District Court, which had jurisdiction of the parties and subject matter *to the exclusion of all other courts*, had the duty of determining the issues, *Commonwealth Trust Co. v. Bradford*, 297 U.S. 613, 618-619, and protecting and preserving that jurisdiction over the subject matter until the object of the suit was accomplished and complete justice done between the parties, *Looney v. Eastern Texas R.R. Co.*, 247 U.S. 214, 221; 38 S.Ct. 460; 62 L.Ed. 1084.

"Plaintiff's motion for summary judgment on the complaint and affidavits being unopposed by the defendant bank; the motion should have been either granted, or else the District Court was *required*, under Rule 56 of the *Federal Rules of Civil Procedure* '. . . *to make an order specifying the facts that appear without substantial controversy*, including the extent to which the amount of damages or other relief is not in controversy (emphasis added) . . .' Appellant respectfully submits that if the District Court had complied with Rule 56, from the pleadings, affidavits and depositions on file, *it would have been forced to specify that ALL of the facts alleged by plaintiff were without controversy*. Therefore, plaintiff was, and, appellant respectfully submits, still is entitled to summary judgment against the defendant for the portion of relief specified in his motion for summary judgment, *as a matter of Federal Law*, and is entitled to the return of his lands and chattels his $10,416.95 payment to defendant and means of livelihood.

"THEREFORE: As the result of the failure of the District Court to comply with Federal Statute as stated in Rules 55 and 56 of the *Federal Rules of Civil Procedure*, 28 USCA, the defendant bank was enabled to wrongfully seize, occupy, use and misuse and enjoy plaintiff's lands and chattels and the fruits thereof; without due process; without a hearing; and in rank violation of plaintiff's rights under the Fifth Amendment to the Constitution.

"Wherefore, upon the foregoing grounds, it is respectfully urged by the appellant that this petition for a rehearing be granted; that the Orders of the District Court appealed from be reversed; that default judgment in the sum of $250,000.00, and summary judgment for the remainder of the relief prayed for in his complaint together with his costs and interest, be granted the appellant, Jack C. Vaughan, against the appellee City Bank & Trust Company, Natchez, Mississippi". (R. 81-86.)

VI.

ARGUMENT.

A. Petitioner Believes that the Court of Appeals Should Have Decided a Federal Question in Accordance With Applicable Decisions of this Court, And Other Courts of Appeals.

QUESTION: As the time for serving answer under Rule 12(a) of the Federal Rules of Civil Procedure, 28 U.S.C.A., had expired; and no motion for enlargement of time was made by defendant wherein failure to act was shown to be the result of excusable neglect; on motion to strike by plaintiff, should not a late purported answer of defendant be stricken for failure of defendant to comply with Rule 6(b) of the same Federal Rules of Civil Procedure? If so, then where the defendant is in default, and plaintiff applies to the District Court for judgment by default under Rule 55(b) of the Federal Rules of Civil Procedure, and defendant's representative is served with written notice of the application for judgment, and does not oppose it; may the District Court deny plaintiff a hearing and completely ignore plaintiff's application?

Federal District Courts are without authority to enlarge, change or modify the clear terms of statute as enacted by Congress.[14] And the *Federal Rules of Civil Procedure, 28 U.S.C.A.*, having all the force of statute,[15] therefore, cannot be waived, enlarged, changed or modified by a federal district court in its discretion, except

[14] *Lusk v. Lyon Metal Products*, 9 F.R.D. 250. *Hamilton v. Haynes Freight Lines, Inc.*, 102 F. Supp. 594.
[15] *United States v. Brandt*, 8 F.R.D. 163.

where that discretion is expressly granted by the Rules themselves, or other Federal Statute.

This Court has stated the difference between acts permissive and *acts mandatory*, as follows:

> "The word 'shall' is ordinarily 'the language of command'. *Escoe v. Zerbst, 295 U.S. 490, 493.* And when . (a) . Rule uses . 'may' . (or) . 'shall', the normal inference is that each is used in its usual sense—the one act being permissive, the other mandatory".
>
> *Anderson v. Yungkau, et al., 329 U.S. 482, 488-490; 67 S.Ct. 428; 91 L.Ed. 436.*

The summons and complaint were duly served upon the defendant on March 20, 1953 (R. 25). Defendant then served a motion to dismiss, which is permitted under the provisions of *Rule 12(b)(2) & (6)* of the *Federal Rules of Civil Procedure*. On September 17, 1953, the District Court served notice on the parties that the defendant's motion to dismiss was overruled (R. 49-50). *Rule 12(a)*, in such an instance, then prescribes:

> "The service of a motion permitted under this Rule alters (the provision that a defendant *SHALL* serve his answer within 20 days after the service of the summons and complaint upon him) . . as follows, *unless a different time is fixed by order of the Court:* (1) If the Court denies the motion . . the responsive pleading SHALL be served within 10 days *after notice of the Court's action* . . (Emphasis added)".

Therefore, under Rule 12(a)(1), defendant would have been *required* ("SHALL") to serve his answer on plaintiff "within 10 days"—or by September 27, 1953. However, the district court in its notice to the parties fixed a different time, and enlarged the statutory time by *eight (8) days* by allowing the defendant *until October 5th to answer the complaint* (R. 49).

"Answering" a complaint means to "serve" an answer.

> "There is no requirement in the Federal Rules as to *filing*. Rule 12(a) provides for *service*, not filing. And Rule 5(d) permits filing with the Court within a reasonable time *after service* (emphasis added).
>
> *Blank v. Bitker, (7th CCA), 135 F. 2d 962.*

Rule 5(b) of the *Federal Rules of Civil Procedure*, relating to the method of service, provides that service upon a party *SHALL* be made by delivering a copy to him or by mailing it to him at his last known address, and further provides that service by mail is complete upon mailing.

> "In view of the important consequences that flow from service of pleadings and other papers, the Courts, quite rightly, have required the strictest and most exacting compliance with the Rule when service is made by mail. *Bowers v. E. J. Rose Mfg. Co.*, (9th CCA), 149 F. 2nd 612. Certiorari denied, *Fischer v. Bowers*, 326 U.S. 753; 66 S.Ct. 91; 90 L.Ed. 451".
>
> *United States v. Brandt, 8 F.R.D. 163.*

The defendant bank did not serve its answer on plaintiff on or before *October 5, 1953* (R. 56). Therefore, if the

mandatory "SHALL" of Rule 12(a) means what it says; any purported answer served on the plaintiff *after* October 5th was a legal nullity, and void—*unless the defendant first complied with the provisions of Rule 6(b)!*

Being statutory, the time for serving an answer could not now be enlarged *ex parte* in the Court's discretion.[16] It could not be enlarged *except upon motion and notice by defendant, and only then by a showing that the failure to serve his answer within time was due to excusable neglect.*[17]

After business hours on October 6th, 1953, the defendant bank mailed the purported "Answer of Defendant" to plaintiff. The defendant appended no certificate or affidavit of service showing that the pleading had been served within time (R. 53).

On October 13, 1953, plaintiff applied to the District Court for default judgment, and served a copy of the application upon defendant's representative (R. 60-62). The federal question regarding *Rules Nos. 1, 12(a), 6(b) and 55(b)* was squarely put to the District Court in the following language:

> ". . .as the time for serving answer as prescribed by Rule 12(a) of the Federal Rules of Civil Procedure and the Order of this Court had expired; the

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[16] *Daughtery vs. Western Union Telegraph Co.*, 61 F. 138. *Hurd v. Gere*, 38 F. 537. *Lusk v. Lyon Metal Products (supra)*, 9. F.R.D. 250. *Peter Holding Co. v. LeRoy Foods, Inc., et al.*, 107 F. Supp. 56.

[17] *Schram v. O'Connor, et al.*, 2 F.R.D. 192. *Blackner v. Sun Oil Co.*, 2 F.R.D. Serv. 6b32 Case 1. *Coca Cola Co. v. Bush*, 7 F.R.Serv. 59b.2, Case 4.

said "Answer of Defendant" (should) be held to be fatally defective in that there was a failure to answer within the time prescribed after this Court's overruling of a precedent motion; and. . .under the provisions of Rule 55(b) of the Federal Rules of Civil Procedure this Court (should) grant the plaintiff judgment by default against the Defendant. . .(R. 60-61, and Footnote (9), supra)".

Plaintiff also pointed out that the filing of the "Answer of Defendant":

". . .was in flagrant violation of Rule 6(b) and extremely prejudicial to the substantial rights of the plaintiff. . .(3) Plaintiff verily believes that (his) right to a just, speedy and inexpensive determination of this action, to which he is entitled under Rule 1 of the Federal Rules of Civil Procedure, has been denied him to the prejudice of, and irreparable harm to, his substantial rights. In support of his belief, Plaintiff respectfully shows that this Honorable Court has enabled the Defendant, for the entire crop year of 1953, to wrongfully seize, occupy, use and misuse, and enjoy plaintiff's lands, cattie, farming implements, and the fruits thereof, without due process, and in rank violation of plaintiff's rights under Federal Law; and despite the pleas of the Plaintiff for a hearing, filed herein on June 25, 1953 (R. 54-55, and Footnote (8), p. 7, supra)".

Despite all these clear and insistent warnings to the defendant that it was now in default, and, if it did not take action as prescribed by Rule 6(b), plaintiff was entitled to default judgment under Rule 55(b)—the defendant

bank did nothing; made no effort whatever to comply with the law, *which had been pointed out to it;* and acted just as though Federal Statutes *weren't meant to apply to the City Bank & Trust Company, of Natchez, Mississippi, AT ALL!*

The above federal question was ignored by the District Court. The plaintiff's motion to strike the "Answer of Defendant" was overruled; plaintiff's application for default judgment was ignored; plaintiff's alternate request to reconsider the previous denial of summary judgment was denied; the cause was adjudicated to be "at issue upon the complaint and answer" and the case was continued for another six months. (R. 63-64, and Footnote (12)). And plaintiff was denied his lands, chattels and means of livelihood *for a second crop year!*

In the face of what he believed to be error on the part of the District Court, plaintiff had no alternative but to elect to stand upon the record, suffer a judgment of dismissal for failure to prosecute, and appeal the Court's final order of dismisssal.[18] For plaintiff to have done otherwise would have been a false admission that there was no merit to his motions for summary judgment and default judgment, and, to say the least, a waiver of defects.

Petitioner verily believes that the whole purpose of Rule 56 of the Federall Rules of Civil Procedure would be

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[18] *Dye v. Farm Mortgage Investment Co.* (10th CCA) 70 F. 2nd 514; *Crutcher v. Joyce,* (10th CCA) 134 F. 2nd 809; *Gay v. Ruff,* (5th CCA) 67 F. 2d 684, aff'd 292 U.S. 25, 54 S.Ct. 608, 78 L.Ed. 1099, 92 ALR 970.

absolutely meaningless if every plaintiff had to go through the motions of "re-proving" facts at an expensive trial in order to determine "issues" *which have already been admitted by the defendant to be non-existent by virtue of his failure to oppose a motion for summary judgment, and failure to controvert a single one of the issues set forth in the plaintiff's motion.*

And petitioner also verily believes that Rules 1, 6(b), 55(b), 56, and all other Rules set forth in the Federal Rules of Civil Procedure, and any other Federal Statute, would also be rendered ridiculous and meaningless *if they failed to apply to corporate banks while remaining harshly applicable to men and women citizens of the United States of America.*

Should not the Federal Law apply to the corporate and non-corporate citizenry alike? At least TWICE this Court has said that when a Rule or Statute says that an act "SHALL" be done; being in the language of command, it is MANDATORY that the act be done. *(Escoe v. Zerbst, supra;* and *Anderson v. Yungkau, supra.)* It naturally follows that if a mandatory act is not performed, *then the penalty for disobedience must be paid.* And if Federal Law is just as applicable to corporate as to non-corporate citizens; then the petitioner, plaintiff and appellant below, is entitled to default and summary judgments against the respondent, as a matter of Law.

Did Congress intend for District Courts to "sit on their own hands" in the event some defendant finds it expedient *NOT* to comply with the *Federal Rules of Civil Procedure?*

Surely it would be ridiculous to place any construction on *Rule 55(b)* to the effect that malfeazors and wrongdoers can escape the penalties for their wrongdoing simply by refusing to answer a complaint; and then refusing to oppose the plaintiff's inevitable application for default judgment. And what Court would construe *Rule 56* to the effect that upon plaintiff's motion for summary judgment, the defendant should remain silent?

Petitioner believes that, in accordance with the applicable decisions of this Court, the Court of Appeals and District Court should have held the provisions of Rules 1, 6(b), 12(a), 55(b) and 56 to be MANDATORY, and awarded plaintiff default and summary judgments for the relief prayed.

B. Petitioner Believes that the United States Court of Appeals for the Fifth Circuit has so Far Departed From the Accepted and Usual Course of Judicial Proceedings, and has so Far Sanctioned Such a Departure by the District Court as to be a Main Concern to the Integrity of the Federal Judicial Process, and to Call for an Exercise of this Court's Powers of Supervision.

QUESTION: *Where plaintiff's complaint and motion for summary judgment allege that plaintiff's lands and chattels were wrongfully seized years prior to agreed dates, and years prior to time that any payments were due; and defendant asserts no paramount legal or equitable title or right to the properties, does not deny the glaring breach of agreement, and does not oppose the plaintiff's motion for summary judgment—is not the wrongful and*

illegal seizure of plaintiff's lands and chattels by defendant, without consent and without a lawsuit, the taking of defendant's property without due process of law, and in rank violation of plaintiff's rights under the Fifth Amendment to the Constitution?

This question was pointedly brought to the attention of the District Court on October 13th, 1953 (R. 55, see also footnote (9), *supra*).

This question was also pointedly brought to the attention of the Court of Appeals *twice*—once in the appellant's specification of errors (R. 68, see also page 12, *supra*), and again in the appellant's petition for rehearing (R. 84-85). See also footnote (13), *supra*.

The Record shows that both Courts "looked the other way".

The District Court ignored the question—as did the Court of Appeals—though the Court of Appeals *did* make the observation:

> "Putting to one side * * * appellee's claim that the district court should have dismissed the action for failure of plaintiff's complaint to state a claim * * * we think it quite clear beyond any question that there was no basis whatever for (plaintiff's) claim that he was entitled on his pleadings to a summary judgment * *".

If the complaint stated a claim (and the Court of Appeals does not deny that it does), as a matter of federal

law, there could be no other alternative except to grant plaintiff his motion for summary judgment, *for the motion was unopposed and there were no issues remaining in the case to be tried!* The law is too well settled that upon a motion to dismiss for failure of a complaint to state a claim upon which relief can be granted—as was done by the defendant bank here—the complaint shall be construed in the light most favorable to the plaintiff, with all doubts resolved in his favor, and the allegations accepted as true. *Montgomery Ward & Co., Inc. v. Langer, et al.*, 168 F. 2nd 182, 185-186, citing: *Postal Telegraph Cable Co. v. City of Newport*, 247 U.S. 464, 474, 38 S.Ct. 566, 62 L.Ed. 1215. *Gibbs v. Buck*, 307 U.S. 66, 72, 56 S.Ct. 725, 83 L.Ed. 1111, etc. Obviously the complaint did state a claim, or else the Court of Appeals would not have had to resort to "putting to one side" the appellee's claim that the complaint failed to state a claim.

It is too apparent that the Court of Appeals purposely passed this question on to this Court of last resort for final determination: Does a complaint which alleges that the plaintiff was stripped of his lands and chattels and means of livelihood *years before* agreed dates and years prior to the time that any payments are due on a mortgage, *without a lawsuit, without consent, without any pretense* of legality, and *AFTER* the District Court had obtained jurisdiction of the parties and subject matter to the exclusion of all other courts, state a claim to *any* relief?

The facts are clear. Plaintiff's property was taken. He gave no consent to its seizure; and no legal process

granted the defendant *the right to seize*. Therefore, the property was taken without due process, and plaintiff's Constitutional guarantees under the Fifth Amendment were completely disregarded. The illegal action was condoned by the District Court and the Court of Appeals.

Petitioner respectfully submits that unless this Supreme Court is willing to admit that a Mississippi bank must be recognized as a power greater than Congress or the Federal Courts; the Judgment of the Court of Appeals should be reversed. After all, LAW is the only bond which binds 165,000,000 Americans of different races, religions, creeds, origins and purposes into *one* great nation. Each citizen looks to the courts to protect him, his home, and his property from illegal acts of more powerful internal enemies of the law; just as he looks to the Armed Forces to protect him from external aggressors. Wilfully and intentionally deny to the humblest and least consequential of our 165,000,000 citizens the protection of the law in his hour of need—and you corrupt the very foundations upon which our survival as a Nation depends. For if we are to continue to dwell peaceably, ALL of us, and not just some of us, must abide under the same laws. And no single member—not even a bank—must be permitted to feel that those laws do not apply to it.

Petitioner respectfully submits that the integrity of the federal judiciary is challenged by the facts contained in the Record of this case. The respondent has been permitted by Federal Courts to ignore Federal Law.

CONCLUSION

For the foregoing reasons, petitioner prays the Court to grant certiorari; to reverse the judgment of the Court of Appeals of January 28, 1955; and to ORDER that legal force be given to federal statute as expressed by Rules 1, 12(a), 6(b), 55(b) and 56 of the Federal Rules of Civil Procedure, 28 USCA, by granting petitioner the relief prayed by him in the Courts below, to-wit:

1. Default judgment against respondent in the amount of $250,000.00, with interest from October 5, 1953.
2. Summary judgment for $10,416.95, with interest from October 23, 1950.
3. Cancellation of the Agreements of December 29, 1949, and all deeds of trust or chattel mortgages executed thereunder by petitioner.
4. Summary judgment for the return of petitioner's lands and chattels, which were seized by respondent since the institution of this suit in the United States District Court for the Southern District of Mississippi on March 20th, 1953.
5. Petitioner's costs, and such other relief as is by this Court deemed appropriate.

Respectfully yours,

JACK C. VAUGHAN,
Petitioner, *In Propria Persona*,
MAILING ADDRESS:
Post Office Box 1005,
Gardena, California.

AFFIDAVIT OF SERVICE.

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES, SS.

Before me, the undersigned authority in and for the County and State aforesaid, came and appeared Jack C. Vaughan, who having first been duly sworn, did state on oath that he is the petitioner in the above styled cause, and that he did serve a true copy of the above and foregoing petition for writ of certiorari upon the respondent, City Bank & Trust Company, Natchez, Mississippi, by mailing same, postage prepaid, via Air Mail, First Class Mail, to counsel of record said respondent, in an envelope duly addressed to said counsel at his last known address, as follows, to-wit: Mr. R. Brent Forman, Post Office Box 599, Natchez, Mississippi, and that same was duly deposited in the United States Mails in the United States Post Office, ...GARDENA....., California, by the undersigned on the 2nd day of ...JUNE....., A. D., 1955.

s/ JACK C. VAUGHAN
Jack C. Vaughan

SWORN TO AND SUBSCRIBED before me this 2 day of JUNE....., 1955.

s/ R. J. Albright
(Seal) Notary Public.

My Commission Expires: 11-26-1956